IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18-01-2005

Coram;

The Honurable Mr. Justice V.KANAGARAJ

Crl.O.P.Nos.25095 & 25540/2004
&
Crl.M.P.Nos.8160 and 8316 2004

1. Uday Kotak,
   Vice-Chairman & Managing Director,
   M/s. Kotak Mahindra Bank Limited,
   36-38-A, Nariman Bhavan,
   Nariman Point, Mumbai-400 021.

2. S.Venkatesan,
   Zonal Controller-South,
   M/s. Kotak Mahindra Bank Limited,
   39, Montieth Road,
   1st Floor, CEE BROSS CENTRE,
   Chennai-600 008. ... Petitioners in both the Crl.O.Ps.

Vs.

State, represented by the
Labour Enforcement Officer (Central),
Ministry of Labour, Government of India,
No.26, Haddows Road,
Shastri Bhavan,
Chennai-600 006. ... Respondents in both the Crl.O.Ps.

These Criminal Original Petition are filed under Section 482 of the Code of Criminal Procedure, as stated therein.

For Petitioners: Mr. N.V.Srinivasan
for M/s. N.V.S. & Associates

For Respondent: P.Kumaresan(ACGSC)

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Common order:-

These petitions have been filed under Section 482 of Cr.P.C. praying to call for the records pertaining to C.C.Nos.4337 and 4338 of 2004 pending on the file of the Court of II Metropolitan Magistrate, Chennai and quash the same.

2. The petitioners would submit that the 1st petitioner is working as Vice-Chairman and Managing Director at Mumbai and the 2nd petitioner is employed as Zonal Controller-South commercial Vehicles at Kotak Mahindra Bank Limited at Chennai; that the 2nd petitioner received a notice dated 31.10.2003 from the respondent alleging non-compliance of caertain provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter called as the 'Act') by the Kotak Mahindra Bank Limited at Chennai; that upon due consideration, it was found that there is no violation of the legal provisions and consequently it was presumed that the issue was set at rest by the respondent; that the 2nd petitioner subsequently received summons from the II Metropolitan Magistrate, Egmore, Chennai in C.C.No.4337 and 4338 of 2004 calling upon the petitioners herein to appear in person before the Court on 9.7.2004 in respect of the complaint preferred under Section 23 of the Act for breach of Sections 7 and 9 of the Contract Labour (Regulation and Abolition) Rules 1971 and under Section 24 for violation of the Central Rules; that the provisions of the Act are not attracted as the petitioners have not employed Contract Labour at any point of time; that the respondent had no jurisdiction under law to file the complaints and cause issuance of summons on the petitioners through their local branch at Chennai; that there is no employment of the Contract Labour and there was no need for the registration under Section 7 of the Act and Section 9 has no application in the matter; that the inspection report fails to reveal the details of names and location of the establishment which was inspected by the respondent and the inspection report under column 5 also has number of employees over written and corrected and that it can be safely construed that no inspection was conducted by the respondent; that the first petitioner is the Vice Chairman and Managing Director of the bank who is not based at Chennai and inclusion of his name as the principal employer by the respondent as an accused is nothing but motivated; that as per Section 2(g) (iv) of the Act 'Principal Employer' is defined as a person responsible for supervision and control of the establishment; that at no stretch of imagination, the Vice Chairman and the Managing Director can be deemed to be in control and supervision of an establishment which is yet to come into existence and the same is the case of the 2nd petitioner who is a Zonal Controller for South and hence, they are not responsible for the supervision and control of an establishment.

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3. The petitioners would further submit that the Kotak Mahindra Bank Limited was started very recently under the Reserve Bank of India licence and recently a licence was granted for opening the branch at 555, Anna Salai, Chennai-600 018 on 3.10.2004 and the licence for starting a branch at CEE BROS Centre, 1st Floor, Montieth Road, Egmore was issued on 18.2.2003; that the petitioners had issued work order with M/s. N.S.Associates Private Limited for interior decoration and for civil and electrical work for a period of one month for setting up a branch ion Anna Salai; that the petitioners bank purchased Air-conditioners for installation in the company and therefore, this cannot be construed as engagement of contract labour for turning out any routine banking activity; that regarding the contract referred to in the inspection report with M/s. Jayalakshmi Security Service, the various High Courts have held that the employment of the people for safety and security cannot be brought under the purview of the Act and as such the Act itself is not attracted; that the impugned proceedings are liable to be quashed as for as the petitioners are concerned, since nowhere in the complaint it is mentioned that the petitioners were the persons nominated by the Bank; that the complaint was premature without affording a reasonable opportunity of hearing and the entire proceedings are contrary to the principles of natural justice and the summons issued by the respondent are liable to be quashed and hence the petitioners would seek the relief extracted supra.

4. During the arguments the learned counsel appearing on behalf of the petitioners and the Additional Central Government Standing Counsel appearing on behalf of the respondent/complainant besides reiterating the averments of the petition and denial of the same contra, they would also cite the relevant portions from the decided cases by the upper forums and therefore it is relevant to trace the same for proper considerations.

5. On the part of the petitioners they would also cite the following decisions, the first being M/S. GAMMON INDIA LIMITED Vs. ASSISTANT COMMISSIONER OF LABOUR, NAGPUR & ANOTHER(1976 LAB I.C. 745), wherein the Division Bench of the Bombay High Court dealing with the Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970 has held

> "It appears to us that in the present case when the work is carried out by the petitioner as a contractor on behalf of Board, the Board will be responsible for the control and supervision of the establishment. By giving a contract to the petitioner, the Board is not

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> deprived of its powers of supervision and control over the work made by the petitioner. For the purpose of the Act, it appears to us that it is the Board alone which is responsible for the control and supervision as contemplated in the sub-clause. It is difficult to see how the petitioners can be said to be the principal employer. .... It is difficult to see how the petitioner can be said to be a Principal Employer appears to us that under the Act only one principal employer is contemplated. The Act was passed to prevent the exploitation of the Contract Labour and to introduce better conditions of work. It provides for regulation of the service conditions of contract labour. The Act intends to abolish the contract labour wherever possible and practicable and where it cannot be abolished altogether. The policy of the Act is that the working conditions of the contract labour should the regulated as to ensure payment of wages and provision of essential amenities."

6. The second judgement cited on the part of the petitioners is one from KIRLOSKAR BROTHERS LIMITED Vs. EMPLOYEES' STATE INSURANCE CORPORATION (1996 (2) SCC 682), wherein the Honourable Apex Court dealing with the definition of "employee" and "principal employer" and the scope and applications as per the ESI Act, 1948, has held

> "The interpretation has held object that is to provide certain benefits to employees and the interpretation must be done in the light of not only the objects of the Act but also constitutional, fundamental and human rights."

7. The third judgement cited on behalf of the petitioners is one in ADITYA PURI Vs. UNION OF INDIA AND ANOTEHR (2004 LLR 311), wherein the learned single Judge of the Jharkhand High Court has held

> "The petitioner has challenged the impugned order on the ground that the premises of the company was inspected at Ranchi whereas this petitioner holds his office at Mumbai and, therefore, he has got no direct nexus with the alleged crime and consequently the cognizance could not have been taken against him."

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8. The next judgement relied on by the petitioner is one by the Patna High Court reported in 1986 LAB IC 2003, wherein a single Judge of the said High Court has held

> "The prosecution of the proprietor of a proprietary firm or the manager of a colliery under Section 23 cannot be sustained in absence of a statement as required by Section 25 that he had been incharge of and responsible to the business at the time of the commission of such offence. Section 25 would be a bar to the prosecution. It is further held therein that 'The cardinal principle of the criminal jurisprudence, is that if it is a case of apparent harassment and humiliation, the continuation of any proceeding amounted to the abuse of the process of the Court, then in that circumstance, the Court has to interfere with the same.'"

9. On the part of the respondent, they would cite a judgement reported in DELHI MUNICIPAL CORPORATION Vs. PURUSHOTAM DASS JHUNJUNWALA & OTHERS (AIR 1983 Supreme Court 158), wherein the Honourable Apex Court has generally held inherent to the facts of the case dealt with by it,

> "In the instant case, a clear averment has been made regarding the active role played by the respondents and the extent of their liability.... In this view of the clear allegations made in paragraph 5 of the complaint, we are not in a position to agree with the High Court that it is a fit case in which it should have been exercised its discretion under Section 482 of the Criminal Procedure Code."

10. In the second judgement cited by the respondent is from J.P.SHARMA Vs. VINOD KUMAR JAIN & OTHERS (AIR 1986 Supreme Court 833). In this case, the complaint against accused persons for offences under Section 120-B IPC and Section 5 of the Imports and Exports (Control) Act (18 of 947) was quashed by the High Court under Section 482 of the Cr.P.C. and on appeal, the Honourable Apex Court has held:

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"The grounds upon which the High Court Judge seems to have quashed the complaint in the instant case was the subsequent report by the CBI which had not yet been proved and considered in the background of the allegations made and secondly that some of the parties alleged to be in the conspiracy were not made parties. These are no grounds for quashing the criminal proceedings where on prima facie being satisfied, the Magistrate had taken cognizance. Taking all the allegations in complaint to be true, without adding or subtracting anything, at this stage it cannot be said that no prima facie case for trial had been made out. That is the limit of the power to be exercised by the High Court under Section 482 of the Code of Criminal Procedure. The High Court in the instant case has exceeded that jurisdiction. The question at this stage is, not whether there was any truth in the allegations made but the question is whether on the basis of the allegations a cognizable offence or offences had been alleged to have been committed. The facts subsequently found out to prove the truth or otherwise on the allegation is not a ground on the basis of which the complaint can be quashed. The truth or otherwise of the allegation made in the complaint would be investigated at the time of the trial."

11. The third judgement cited by the respondent is one reported from RADHEY SHYAM Vs. KUNJ BEHARI (AIR 1990 SCC 121). In this case, when the High Court quashed the complaint under Sections 120-B and 302 IPC on ground that there was inadequacy of evidence against the accused, the Honourable Apex Court has held that 'the High Court's conclusion about the inadequacy of the evidence against respondents 1 to 3, besides being a premature assessment of evidence, is also attributable to the wrong premises on which the High Court's reasoning is based'. On such observations, the Honourable Apex Court has reversed the findings of the High Court and restored the charges framed against respondents 1 to 3 therein for trial in accordance with law by the trial Court.

12. The last judgement cited by the respondent counsel is one reported in STATE OF U.P. Vs. O.P.SHARMA (1996 SCC Criminal 497), wherein the Honourable Apex Court while dealing with Section 482 of Cr.P.C. in the matter of quashing of a Criminal proceedings at initial stage has held:

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"The High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 or under Article 226 and 227 of the Constitution of India that when the FIR containing all the ingredients of the offence, the High Court has committed grave error of law in quashing the same."

13. Both the above criminal O.Ps have been filed under Section 482 of the Code of Criminal Procedure praying to call for the records pertaining to C.C.No.4337 and 4338 of 2004 pending for trial on the file of the Court of II Metropolitan Magistrate, Chennai and quash the same. The averments are generally common pertaining to the facts and circumstances of the case and the law on the subject.

14. On the part of the petitioners they would come forward to allege that M/s. Kotak Mahindra Bank Limited is a new venture and they have been established very recently i.e., in the year 2003 at Chennai and the petitioners in both the petitions who are arrayed as first accused and second accused are none other than the Vice Chairman and the Managing Director and the Zonal Controller for South of the said Bank and that they cannot be dragged into such a case by the respondent without even knowing as to who is the proper person to be prosecuted as per the memorandum and Articles of Association concerned with the said Bank and the petitioners being the Vice Chairman and Managing Director and the Zonal Controller, (South), they have been unnecessarily involved in such Labour Practices particularly since they are not based at Chennai, but they have shown as the accused branding them as Principal Employer in a motivated manner. It would further be argued on the part of the petitioners that as per Section 2 (g) (iv) of the said Act 'in any other establishment, any person responsible for the supervision and control of the establishment' which is relevant for consideration and since the petitioners being not such persons responsible for the supervision and control of the establishment, for which different authorities are functioning at different stages, at no stretch of imagination the Vice Chairman and the Managing Director could be deemed to be in control and supervision of the particular unit or establishment and therefore they cannot be dragged into such litigation or prosecutions which is only motivated and only to malign and mar the reputation of the petitioners and the establishment as well they have been made accused. On such strong grounds, the petitioners would come forward to file the above criminal original petitions seeking to quash both the above proceedings initiated by the respondent.

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15. It would further be contended that the Kotak Mahindra Limited was very recently started under the licence of the Reserve Bank of India which was granted very recently for running the Branch at Door No.555, Anna Salai, chennai that was only on 3.10.2004 and yet another branch at CEE BROSS CENTRE at Montieth Road, Egmore, Chennai based on the licence issued on 18.2.2003 and they have only issued the work order with M/s.N.S.Associates Private Limited for interior decoration and for civil and electrical work for a period of one month for setting up a Branch in Anna Salai. It would further be argued on the part of the petitioners that for installation of the air conditioner in the company, they have to engage skilled workmen and the same cannot be construed as engagement of contract labour for turning out any routine banking activity and the contract referred to in the Inspection report employing the people for safety and security measures cannot be brought under the purview of the prohibited limits of the Act as it has been held time and again by various Upper Forums of law and therefore on such strong grounds, they would plead that the impugned proceedings in both the above Calendar Cases initiated by the respondents are only liable to be quashed, particularly when the respondent is not able to mention anywhere in the complaint that the petitioners are the authorities nominated by the Bank in charge and responsible for carrying out such obligations on behalf of the establishment and therefore would seek the relief sought for in both the above criminal original petitions.

16. In consideration of the facts pleaded having regard to the materials placed on record and upon hearing the learned counsel for the both, what this Court is able to assess is that without following any procedures or norms of law regarding as to who are those principal employers in a banking concern such as that of the petitioners' company and quite against the dictum of law and the propositions held by the Upper Forums, particularly by the Honourable Apex Court, the respondent, adopting crude method which is absolutely bereft of legal force or adherence to the norms of law, has filed both complaints against the petitioners and they cannot be allowed to be proceeded against the petitioners since they are not the principal employers as required under law nor has the respondent anywhere in the complaint made it clear that the petitioners are in any other manner responsible, within the meaning of the provisions of the law pertaining to the subject or even on facts of the case or in accordance with the propositions held by the Upper Forums regarding the subject. The judgments cited on the part of the petitioners are pointed to the subject that the petitioners cannot be termed as the 'principal employers' so as to be prosecuted under the provisions of the Contract Labour

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(Regulation & Abolition) Act, 1970. Even on facts, no case has been made out for the prosecution of the petitioners company from the manner in which it has been assessed by this Court in the foregoing paragraphs. On the contrary the judgments cited on the part of the respondent are to the effect of the powers of the High Court under Section 482 of the Cr.P.C. and that the criminal proceedings cannot be quashed at their threshold. It is worth mentioning the settled law that if the court finds that there are no materials to proceed against the accused persons and continuation of the proceedings would only only be an abuse of process of law, the said proceedings are liable only to be quashed. In the above circumstances, the only course left open for this Court is undoubtedly to grant the prayer sought for by the petitioners and hence the following order:

In result,

(i) Both the above Criminal Original petitions succeed and they are allowed accordingly;

(ii) The Calendar Cases registered against the petitioners in C.C.Nos.4337 and 4338 of 2004 pending on the file of the Court of II Metropolitan Magistrate, Chennai are hereby quashed;

(iii) Consequently, all the connected Crl.M.P. Nos. 8160 & 8316 of 2004 are closed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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   Chennai.
2. -do- Through The Chief Metropolitan Magistrate,
   Egmore, Chennai.

3. The Labour Enforcement Officer (Central),
   Ministry of Labour, Government of India,
   No.26, Haddows Road,
   Shastri Bhavan,
   Chennai-600 006.

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